1950. K **File No.** O.Misc 50 Pt I

Legal Dept.

A **BRANCH**

Subject:— Opinions — Miscellaneous given under the draft Constitution of India

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S.C. 13/6
5 copies.

Office of the R.L.A.

Compensation for bunglows Nos. 69 70, at Lonavla References to arbitration regarding

The view expressed by Revenue Department at page 28 ante is not correct. The payment of the some specified in full settlement of compensation is one of the terms of the agreement. The owner of the requisitioned Bungalows contends that the compensation thus settled does not include the future levy of any fresh tax. Consequently this contention will have to be referred to arbitration under the arbitration clause of the Agreement.

P.M.Lad

16-1

Remembrancer of Legal Affairs.

U.K. to R.D.NO. 734 . dated the 17th January 1950.

,C. 8/6

Office of the R.L.A.

Transfer of cases pending with the Sarnyayadish of Janjira in respect of matters relating to Jafarabad.

Section 25 of the Civil Procedure Code would not be available in the present case as no Civil Court in the Bombay Province has jurisdiction to hear the miscellaneous applications Nos. 3 and 4. Presumably Saurashtra Government may have made some provision for the transfer and hearing of cases pending with the Sarnyayadhish in respect of matters relating to Jafarabad. Even if no such provision is made it would be for the Saurashtra Government to do so now. Home Department may therefore address a letter to the Saurashtra Government stating the facts and enquiring to which Court the 2 miscellaneous applications should be directed to be transferred from the High Court.

P.M.Lad
11-1

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 511 , dated the 12th January 1950.

S. C. 8/6

Office of the R.L.A.

Re. Divorce Jurisdiction of Court.

The Contract of marriage under the Mohammedan Law may be dissolved

(1) by the husband a' his will, without the intervention of the Court.

(2) by mutual consent of the husband and wife without the intervention of a Court; and

(3) by a judicial decree at the suit of a husband or a wife.

The wife cannot divorce herself from her husband without his consent except under a contract made before or after marriage but she may obtain the divorce by judicial decree on the following grounds.-

(1) impotancy of the husband;

(2) false charge of adultery;

(3) cruelty; and

(4) desertion.

(see Mulla's principles of Mohamadan Law pp. 232 and 240-42; Kadir vs. Kolemal Bibi 62 Calcutta, 1088).

The jurisdiction to pronounce a decree for divorce is exclusively based on the matrimonial domicile of the spouses i.e. the domicile of the husband at the time of institution of his suit, for the domicile of a wife during coverture is under English law the same as the domicile of a husband. (see Le Mesurier vs. Le Mesurier 1895 A.C. 517, Dicey's conflict of Laws pp. 230-31) Since the husband in the present case appears to have domicile in Pakistan a suit for divorce will have to be filed in Pakistan.

P.M.Lad
9-2

Remembrancer Of Lega Affairs.

U.R. to E.D. through P. & S.D.No. 108-Confl. dated the 11th February 1950.

S.C. 8/6

Office of the R.L.A.

Recovery from Mr. Patil of amounts misappropriated Mr. Kadam.

The fact that Mr. Kadam was prosecuted for misappropriation of Government money would not debar Governemnt from claiming the amounts from Mr. Patil provided he is found to have appropriated these amounts. The Magistrate has found that Mr. Kadam paid these amounts is others under the instructions of Mr. Patil after taking receipts from them. Mr. Patil , being the head of the office should have realised his responsibility to credit these amounts to Government treasury. Strangely enough after directing Mr. Kadam to make payments, he proceeds to prosecute Mr.,Kadam for misappropriating these amounts. In the circumstance this appears to be a fit case to call upon Mr. Patil to pay the amounts after holding a formal inquiry.

P.M.Lad
9-3
Remembrancer of Legal Affairs.

U.R. to A & R. D. , No. 3343 , dated the 10th March 1950.

S.C. 9/6

The most important point for consideration is whether the Contractor is entitled in Law to claim any compensation from Government on account of the extra costs incurred by him as a result of the reduction in the period of execution of the work. Clause 6 of the Notice to Contractors provides that the time allowed for carrying out the work as entered in the tender shall be strictly observed by the Contractor and shall be reckoned from the date on which the order to commence the work is given to the Contractor. Clause ~~xx~~ ~~xxx~~ 22 of the Schedule of Conditions of Contract subject to which the tender was made, originally provided that possession of the site should be given to the Contractor on 28th April 1949 and the Contractor should complete the works ready for occupation on 31st July 1950. The work of construction by the Contractor , however, was ~~xxxxx~~ actually commenced on the 11th May 1949. A meeting was held on 11th June 1949 where the Milk Commissioner, the Executive Engineer, Ramsingh the representative of Messrs. Gregaon Batley & King, and Mr. Wadia of the Indian Construction Company Ltd., (Contractor), were present. Two points were considered at this Conference ; one related to the cost of cement, and Steel payable by the Contractor in respect of which a certain tentative conclusion was arrived at, and the other related to the time limit for the completion of the ~~works~~ ors. H.M.(C.S.) did not like that the Contractors should be allowed such a long time as up to July 1950 as stipulated in the Tender Notice for ~~marrying~~ Completing the buildings and desir ed that the Contractor must complete the work by the end of December 1949 and it should be so specified in the Contract to be executed He further desired

that penalty in default should apply after the 31st December 1949. The Contractor who was present at the Conference stated that he would try his best to adhere to the stipulation but on the part of Government they must guarantee to supply him all the cement, steel and other controlled materials in full quantities as he required a month in advance of his requirements so that his extra labour may ~~be~~ not remain idle (See page 41 ante). It appears from the noting of the office of the Milk Commissioner (see page 61 ante) that some time in August 1949 the Contractor was called who, while pressing again his claim for extra compensation in respect of the fluctuations in prices of ~~x~~ cement, steel and other controlled materials, added, "Although at the time of advertising the tenders the period of 12-15 months was given, Government have been insisting on him to complete the work in almost half the time to which he has already agreed and he is striving ~~hard to complete the work in almost half the time to which he has already agreed xxdxhaxis xtrixing~~ hard to complete the job within the period required by Govt. In the noting at pages 65-67 it is stated thus- "He (the contractor) added that against the stipulated time of completion of the job up the 31st July 1950, H.M.(C.S.) had pressed him, at a meeting with the Architects and himself on 11th June 1949, to complete the two buildings by 31st December 1949 and three by March 1950. He said that he had to employ extra supervisory staff and put in much heavier investment on procuring of materials in order to adhere to the date insisted upon by Government. He had raised no point regarding compensation but on the other hand if he received no relief on the increase of prices by Government on certain controlled material on which he had no control he would have to lose heavily

on the work" After the Contractor agreed to complete the work before the stipulated time as desired by the H.M.(C.S.) steps were taken to finalize the terms of the agreement for execution andthe draft agreement was accordingly prepared. Farther negotiations were carried on in respect of the execution. In the course of such negotiations another conference was called on 5th September 1949 by H.M.(C.S.) and it was attended by the Secretary, P.D., Supply Commissioner, Milk Commissioner, the Contractor and the Government's Architects. At this conference the question about the fluctuations in prices of controlled materials was raised and it was decided that P.W.D. should be consulted as to the practice followed by that Department in respect of it. Even at this conference the Contractor did not put forward any claim for compensation in respect of the reduction in time for the completion of the work. After consulting the P.W.D. Government decided to turn down the request of the Contractor for the benefit of fluctuations in prices of controlled materials and accordingly, they informed their Architects (see page 79 ante). The Government Architects, in turn, wrote to the Contractorabout the Government's views in regard to the increase in prices of controlled materials. The Contractor informed the Government Architects as follows :-."These controlled rates are entirely outside our control being fixed by Government itself and we cannot even make arrangements at the time of acceptance of our contract for the required supply of the materials at a fixed rate throughout the job." It may by noted that even in this reply, the Contractor did not raise the question of compensation for reduction in time for fulfilling the Contract. All that he pressed for was that the Government should agree to inserting a clause in the agreement about fluctuations in prices

of controlled materials. During all this time the Contractors were carrying on the work, but the progress was found to be very slow. Consequently, the Milk Commissioner wrote to the Government's Architects on the 14th December 1949, complaining about the unsatisfactory progress of the work and asking them to give to the contractor a final date for the completion of the work. The Architects after consulting the Contractor and interviewing the M.M.(C.S.) wrote to the Milk Commissioner on the 19th December 1949, that, "The Contractors have been fully appraise of the situation and of the imperative necessity of employing much larger strength of labour and also to supplement ~~xxx~~ their centring material in order that larger turn over of work may be accomplished . . . The Contractors have assured us that they were in a position to do." They further stated in that letter, "They (Contractors) would be using two weeks of this month mostly for organising and putting in swing much larger labour strength. In turn they have requested us to give them ~~xx~~ an assurance that there wil l not be any changes in building * * * In consideration of the intricate mature of the stages of plainning being over, the contractors will confirm in writing that they will complete the Rs. 5,33,000/- worth of works during the months of January, February and March 1950. . . . Considering the fact that we have ourselves laid down in the tender a period of 15 months which we consider to be the appropriate time for the completion of such project, we would like to stress that the above programme, as now agreed to by the Contractors, should be considered as satisfactory and workable. In actual time it would mean that the

completion of the project will be in about a year's time, resulting in a saving of three months.".

2. On this letter the H.M.(C.S.) directed that the Contractor may be informed that "Not a day more (than the time asked for by the Architects) will be given to the Contractor". Accordingly, the Milk Commissioner wrote to the Architects that the buildings must be completed before the end of March 1950 ipso. anextension ofthree months was approved and accepted by Government, The Architects, in turn, wrote to the Contractor that the "H.M.(C.S.) - Mr. Dinkarrao Desai - the Milk Commissioner and ourselves will expect you to complete the above buildings within this extended period"(page 147 ante). On 11th January 1950, the Contractor wrote to the Government Architects acknowledging their letter of the 29th Deccember 1949, and explaining that the delay in execution of the work was due to circumstances beyond their control, and adding at the end, "We fail to understand that inspite of your asking us to do the work at such excessive speed, no mention is made about any compensation to us if the work is held up or delayed due to delays on the part of the Government . . . . And no extra rates are allowed to us by you for asking us to do the work in less than half thetime."

3. It is clear from the correspondence stated above that it is only by the letter of the 11th January 1950 that the Contractor raised for the first time the question that no extra rates were allowed to them fordoing the work in less than half the time,, although they did not make any specific claim or stipulation even in that letter in respect of it. It appears that, thereafter the Contractor and the Architects discussed the matter between themselves and

the letter wrote to Government about the Contractor's claim for compensation if the work is to be finished before the 30th April 1950, in the following terms :-

" The Contractors are agreeable to complete the building work entrusted to them by the end of 12 months i.e.30th April 1950, but to do this they will have to meet a rise in cost of labour, materials, centring and supervision, the approximate cost of which are estimated about Rs. 51,000/-."

5. It is true that in the tender the Contractor was required to complete the work within 15 months, but there was no contract executed between Government and the Contractor and during the course of negotiations for finalizing the terms of the contract Government ~~was~~ proposed that the work should be completed before the end of 1949, to which the Contractor agreed During all these five or six months after the proposal for the completion of the work before the end of December 1949 was made by Government and accepted by the Contractor, the letter made no claim either expressly or impliedly in respect of any extra compensation for the completion of the work within the reduced period. It could be seen from the correspondence that all that the Contractor was agitating for was th he should be given the benefit of the rise in prices of the controlled materials on the assumption that the rates mentioned by him in the tender should presumably be taken as the rates ruling then. It is true that there is no executed contract between the parties, but a contract could be spelt from the correspondence and such contract would certainly be binding between the parties. The stipulation regarding the time limit as stated in the tender was varied by the proposal made by Government and accepted by the Contractor. ~~Thus~~ This a kind of variation would certainly

be lawful for it is a variation by the consent of the parties and no consideration for such variation is necessary (see Vasudeo V. Yellappa. 43. Indian Cases . 401. and Ayar's law of Contract" pp. 760-764). Except with regard to the variation of time limit there was no other variation in the contract. The question about the benefit of rise in prices of controlled materials could be decided on the terms of the tender on the basis of which the contract was accepted by Government. In other words, this involves no variation in the terms of the contract Consequently, there has been no term which is still in the stage of negotiation between the parties.

5. As stated above, when the variation in the time limit was proposed by Government, the Contractor made no stipulation regarding the compensation payable to him, Nor did he make any such claim even when the time was extended up to the end of 30th April 1950. In these circumstances, it appears that the Contractor could be deemed to have accepted the variation in respect of time limit unreservedly and consequently, he would notbe entitled in law to claim any compensation therefor.

6. Provisional draft reply to Government's Architects is appended herewith.

P.M.Lad
17-2

Remembrancer of Legal Affairs.

U.R. to Milk Commissioner No. dated the Feb. 1950.

S.C. 9/6

Bombay. ancy Act tion 70(b).

The decision of the Joint Civil Judge at Kumta in Civil Suit No. 2079 of 1949 that the Civil kxx Court has jurisdiction to entertain an application from a landlord to evict a tenant is astonishing and the reasoning given by him in support of his decision is shocking to the judicial mind. According to him, section 29, sub-section (2) of the Bombay Tenancy and Agricultural lands Act, 1948 does not give a jurisdiction to the Mamlatdar to entertain any application from a landlord for eviction after termination of the lease and consequently the Civil Court's jurisdiction is not barred but it would be open to a landlord either to sue the tenant in the Civil Court or to make reference to the Mamlatdar under section 70, clause (9), in which case the Civil Court's jurisdiction under section 85 would be ousted and that in any case the Civil Court cannot xxx hand over possession to the landlord. All these conclusions are erroneous and his interpretations of the provisions of the Acts are misconceived. Section 85 expressly bars the jurisdiction of a Civil Court to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealth with by Mamlatdar or a Tribunal etc. Under section 29, sub-section (2) the landlord for obtaining possession of a land from a tenant is required to make an application in the prescribed form. He would be entitled to make such application only when he is entitled to possession of the land by virtue of section 14, sub-section (1) or section 34, sub-section (1). It is, therefore, absolutely clear that when the lease is terminated under any of these two provision the landlord must apply to the Mamlatdar under section 29, sub-section (2) if he wants to take possession. Consequently the Mamlatdar having jurisdiction to deal with the matter, the Civil Court's jurisdiction is ousted under section 85. Section 70 clause (o) provides that it would be the duty of the Mamlatdar to decide such other matters as may be referred to him by or under this Act. It is unthinkable that under this provision the landlord is given an alternative either to

refer to the Mamlatdar for giving him possession or to go to the Civil Court for such possession. His view is entirely wrong and there is absolutely no doubt that it would be upset in appeal. When the Civil Judge admits that the Civil Court has no jurisdiction to give possession to the landlord, it is unimaginable how the ~~Sm~~ Civil Court can entertain a claim and pass a decree which is quite ineffective and inexecutable. Government may offer the services of the Government Pleader to the tenant in that suit if he desires to appeal ~~agt~~ against the order of the Civil Judge. This is all that can be done at this stage.

P.M.Lad
30-3
Remembrancer of Legal Affairs.

U.R. to R.D. No. 4455 , dated the 1st April 1950.

S.C. 9/6

Office of the R.L.A.

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No specific procedure has been prescribed which a man has to follow if he wants to change his name. "Subject to certain restrictions imposed in the case of aliens the law prescribes no rules limiting a man's liberty to change his name. The law concerns itself only with the question whether s he has in fact assumed and has come to be known by a name different from that by which he was originally known." (para. 810 at p. 555 of Halsbury's laws of England, Vol. 23). "An Act of Parliament, Royal license or other such formality is not required for the purpose of changing one's surname" (ibid para 812 at p. 556). As observed by the R.L.A' in his opinion No. 6641, dated the 30th September 1946, there is no legal formality formality laid down for change of name. There would therefore be no objection to handing over the orders of th Government of India in this case to Mrs. and Miss Rosenstein after they have inserted advertisements in local newspapers and notified the change in the Bombay Government Gazette as suggested by the Government of India in the concluding portion of their letter at page 13 ante.

P.M.Lad
20-4
Remembrancer of Legal Affairs.

U.O. to P. & S.D. , No. 5438 dated the 21st April 1950.

S.C. 9/6

Office of the R.L.A.

The expression "Ruling Prince" or "Chief " used in Government Notification, P. & S.D. No. 411, dated 27th February 1941, must be read in the context of sections 86 and 87 of the code of Civil Procedure, As has been pointed out by the Government of India in their letter ministry of States No. FI(5)-I-A.4708t, dated the 26th January 1949, the relatives of rulers do not enjoy any immunity from criminal and civil proceedings in the Provinces of India, There should not, therefore, be any restriction on the acquisition of property in Provinces by such relatives. They may be governed by normal procedure applying to other citizens. A Maharani even during the life-time of her husband cannot be said to be a Ruler or Chief within the meaning of the expression used in G.R. P. & S.D. No. 411, dated the 28th February 1941, read with section 86 and 87 of the Civil Procedure Code. No sanction for the purchase of the property would, therefore, be necessary. Even otherwise, the Government of India considered that the Provincial Government's consent for the acquisition of property by Princes themselves should be given as a matter of course unless there are reasons to the contrary.

P.M.Lad
23 -4
Remembrancer of Legal Affairs.

U.R. to P. & S.D No. 5703 , dated the 26th April 195

S.C. 9/6

Office of the R.L.A.

The claim made by the Tata Chemicals Limited related to the guarantee given to them by the former Baroda Government in respect of railway freight for the transport of salt from Mithapur to Okha, Although the Baroda State has merged with the State of Bombay the administration of ~~the~~ the former Baroda State Railway has vested in the Central Government. Moreover, in view of the provisions of paragraph 7 of the States Merger (Governors' Provinces) Order, 1949, the liability if any, to refund the freight charged in excess of the rate guaranteed cannot be of the State of Bombay as that liability will be in respect of a guarantee relatable to a central purpose. It would, therefore, be for the Central Government to consider the question of the refund raised by the Tata Chemicals Limited. The view taken by the Development Department is correct.

P.M.led
8-6-50
Remembrancer of Legal Affairs.

U.R. to D.D. No. 7871 , dated the 9th June 1950.

S.C. 9/6

Office of the R.L.A.

The Barkhali Assistant says that the actions of the receivers are against the principles of the Crown Grants Protection Act passed by the Baroda Legislature for the management, attachment etc. of inam villages. particularly section 6 thereof under which no Civil Court can entertain any suit or execution or other proceedings relating to any Crown's grant without the written sanction of the Settlement Commissioner. This section by itself however would not preclude the Court from making an order of appointment of receivers. Under Order 43 Rule 1 clause (s) an order for the appointment of a receiver is an appealable order, and if the defendant in this case considers that the order passed by the Court appointing the receivers of inam property is not a proper order, it is for him to prefer an appeal against that order. Government is not a pary party to the suit nor are Government Interests affected in any way. It is therefore not clear how Government can interfere in this case. The Barkhali Assistant's request to move the Civil Judge for reconsideration of his order is misconceived and is not feasible.

The Commissioner reports that the post of the Barkhali Assistant has been abolished and his power under section 6 of the Crown Grants Protection Act have not been delegated to any other authority. The Commissioner may be requested to suggestmt to the defendant to prefer an appeal against the Court's order.

P.H.Lad
24-3

Remembrancer of Legal Affairs.

U.R. to R.D'No. 7077 , dated the 25th May 1950.

S.C. 9/6

Office of the R.L.A.

ıtion of pay
Shri Hiwale,
tt. Educational
pector of
gs.

By his order dated 26-4-1947, the Political Agent, Gujarat States Agency the Resident sanctioned the appointment of Shri Hiwale, as Assistant Educational Officer in the Dangs on Rs.. 250/- p.m. inclusive of all allowances in the grade of Rs. 350-25-500 with effect from the date of taking over. The Memorandum from the Secretary to the Resident also made the appointment on the same terms. It was also added that the appointment would be in lieu of the House Master on Rs. 750 p.m. sanctioned under Residency Memorandum No. 89-53, dated 5-8-1946. It was also explained to Shri Hiwale that his designation might undergo change when the Educational Officer for Dangs was appointed. It is clear from these orders that in none of these orders it was stated that he was appointed temporarily or in an officiating capacity. The explanation that his designation may undergo change when the Educational Officer is appointed does not make his appointment temporary. His case will therefore have to be treated as that of a permanent Dangs' servant.

P.M.Lad
22-6
Remembrancer of Legal Affairs.

U.R. to E.D. No. 473 - Confl. dated the 23rd June 1950.

S.C. 9/6

Office of the R.L.A.

Bombay Civil Services (Revision of ay)Rules. 1948.

Prior to orders contained in G.R., F.D.,No. 6567/33, dated the 21st August 1948, there were only two general designations of "printers" and "Photographers" and both the jobs carried the same scales of pay. Posts for the various types of work were created and their scales of pay were fixed by G.R.F.D. No. 6567/33, dated the 21st August 1948 as amended by G.R. dated the 2nd December 1948. The employees in the Photozincco press would appear to fall within the meaning of the expression "Subordinate Services" as defined in clause (f) of rule 3 of the Bombay Civil Services Classification and Recrutment Rules, 1939, and consequently the question of their promotion would be governed by the orders in G.R., P. & S.D. No. 4099/34, dated the 18th March 1947 which may be construed as a condition of service applicable to all Government servants When in pursuance of the orders in G.R. F. . No. 6567/33, dated the 21st August 1948, the Manager, Photozincco Press, Poona, made appointments of the various employees to the posts created by the said G.R. he should have strictly complied wit the orders in G.R', P. & S.D. No. 4099/33, dated the 18th March 1947 and should have made appointmen so as not to affect the ss claims of senior, their employees, unless they were found unfit for the posts. As the junior persons were appointed to the posts which carried higher scale of pay over the heads of seniors, their appointments were no made in conformity with the principle laid down in G.R' P. & S.D No. 4099/34, dated the 18th March 1947 and the order was therefore, liable to be revised at the instance of any senior person feeling aggrieved by such appointment. When, therefore, on the representation of the senior persons Messrs. Shamsuddin, Narayan, Esmail and Borate, they were giventheir legitimate promotions in accordance with the principle laid down by Government in G.R., p. & S.D. No. 4099/34, dat d the 18th March 1947, and were actually made to work in such posts and the juniors were made to work in

the posts which carried lower scales of pay as sanctioned by Government, there was no question of reduction. The remuneration that was payable to the juniors was according to the scale of pay prescribed for the posts which they actually occupied and in which capacity they worked.

The decision in Mir Muhammad Haji Omar v. Divisional Superintendent, N.W.Railway (1941) Kar page 394 appears to be distinguishable ~~x~~ on facts for in that case, in the notice given by the Divisional Personnel Officer it was stated - - "Reduced one Incremental stage (RT) for the three months from Rs. 68/- to 61/- from 8th January 1938 for unsatisfactory work resulting in the loss of all good conduct Marks". It was therefore a clear case of "deduction" in pay on account of reduction for "unsatisfactory work". In the present case, however, there is no question "reduction" or "deduction" for the junior persons were given the same scale of pay of the post in which they actually worked, while their seniors during that period worked in posts carrying higher scales of pay in accordance with the principle laid down in G.R., P. & S.D. No. 4099/34.

P.M.Lad
3-4
Remembrancer of Legal Affairs.

H.R. to D.D., No. 4638 , dated the 5th April 1950.

E.C 9/6

Office of the R.L.A.

Article 450 of thePortuguese Penal Proceedings Code apparently deals with two categories of articles. The first category consists of articles of which the accused by their crime deprived the aggrieved parties. An obligation is cast upon the Judge that in the final sentence he shall make an order that these articles should be returned to theperson so deprived, and presumably the trial Judge in this case must have made such an order. The other category of articles consists of those which are not be confiscated in favour of the State but which are to be ordered to be returned to the original owner. These are obviously distinct from the actual stolen property of which the accused deprived the owner by their crime. Apparently, they refer to articles where the claims of a third party are concerned, and that is how the return to the original owner becomes material and the necessity of a deed arises; for, in case of a dispute the Court can say tha they have been returned to a partink particular person under a deed. It is only in respect ofthis letter kind of articles that a deed written in the case proceedings is required. As I read the article, no such deed is neces ary forthe first category of articles. However, this is a point of law which cannot be got cleared excepting through a Portuguese lawyer. I suggest that Shrimati Phishah may be asked to contact the Portuguese Consul in Bombay where she may get the above interpretation verified, and if that interpretation is upheld, may inquire whether the articles cannot then be received on her behalf by our Consul in Goa. If the interpretation be otherwise, and if it is ruled that even for the stolen articles a deed is necessary, the Portuguese Consul in Bombay may enlighten her as to the form of deed and whether for executing the deed the person concerned must actually appear before the Judge since the deed is to be written in the proceedings. or whether a power of attorney can be given to our Consul

S.C.9

at Goe for that purpose;

P.M.Lad
27/6

Remembrancer of Legal Affairs.

U.M. to P. & S.D. No. 8879 , dated the 28th June 1950.

S .C. 11/6

Office of the R.L.A.

The arrears of the interest from advance made to Mr. Rochlani can be recovered through Court; but the travelling allowance of Rs. 843-5-0 made to him as on transfer under F.D. Circular No. 358/33, dated 9th July 1948, not being subject to any condition, cannot be recovered from him.

P.M.Lad
19-4

Remembrancer of Legal Affairs.

U.R. to A. & F.D. No. 5376 , dated the 20th April 1950/

S.C. 4 copies

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Office of the R.I.A.

In this case steps should have been taken to prevent the alteration of the Articles of Association at the time of passing of the resolution for alteration. Now that the alteration has been accomplished, there is no legal power in Government to insist upon a reversion to the old position. It is not quite clear from the papers whether the provision for the nomination of two Directors by Government was based upon any agreement with the Bank. Even if it was were so based, it is now settled law that company cannot be precluded from altering it s acticles thereby giving itself power to act upon the provisions of the altered articles - But so to act may nevertheless be a breach of contract if it is contrary to a stipulation in a contract validly made before the alteration. Nor can an injunction be granted to prevent the adoption of the new articles and in that sense they are binding on all and sundry, but for the company to act upon them will none the less render it ~~them~~ liable in damages if such action is contrary to the previous engagements of the company." Southern Foundries (1926) Ld. v. Shirlaw, 1940 Appeal Cases & 701, at pp. 740-741.

2. The only courses now left open to Government are (1) to threaten an action for damages in case the provision about nomination of Directors was based upon a previous stipulation, (2) to use the voting strength at their disposal-if that be possible-to get its own nominees elected at the next annual general meeting, and (3) to bring pressure to bear through the mechanism of the agreement at p. 5. It is for the Finance Department to consider whether any of these courses should be ~~adopted~~ adopted, or whether Government need at all insist upon their own nominees bring on the Board of Directors, as I Understand that the Bank has nowbeen recognised as a Scheduled Bank.

P.M.Lad 29-6

U.R.to F.D. No. 1 9013 d/-. 30-6-50

Office of the R.L.A.

Recovery of monopoly price.

It may be possible in this case to claim the amoun of contract with 6 % as reasonable compensation for th default made by the contractor. However, looking at t nature and terms of the contract, and the small sum involved, it is a matter for the Department's consider ation whether the claim should be pursued.

P.M.Lad
6/7

Remembrancer of Legal Affairs.

U.R. to H.D. No. 9421 , dated the 7th July 1950.

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11/6

It appears that the Shri G,B,Deshpande was a temporary clerk in the Kolhapur State P.W.D. and was discharged from service on 17-7-1947 after notice. On 29th January 1948 the Rural Development Minister, Kolhapur State passed an order appointing Shri Deshpande as Store Helper on Rs. 25 p.m. in the grade of Rs. 25-1-30 on probation for three months in the vacancy which was acused on account of Mr. G.B. Yadav's appointment to the pexm post of second class mechanic and that order was to be gs given effect to from the date on which Shri Deshpande joined his duties. The next day he offered to join his duties but he was informed that there was no post vacant as mentioned in the order of his appointment. Since then he has been agitating over the question of his appointment He made representations to the Kolhapur State and after the merger of that State, to the Secretary, P.W.D. in this connection. He was informed that as there was no vacancy, nothing could be done. He made a representation on 23-5-50 to the Hon'ble the Chief Minister requesting the cancellation of the order of his appointment made by the Rural Development Minister, Kolhapur, as, unless it was so done, he xx could not seek job anywhere else. He w informed that it was xxx not necessary to can cel the order of his appointment issued by the Rural Development Minister, Kolhapur State, a that he was at liberty to seek a job elsewher He has again made a representation on 27-6-5(to the H.C.M. contending that either the ord of his appointmentshould be given effect to, it should be cancelled and he should be pa

rom the date of the order t t e date of its cancellation as he could not seek employment. since to do so whenthe order was existing would amount to disloyalty to Govt. P.W.D. propose to inform hi that it is not necessary to cancel the order of January 1948 and that it is quite open to him to seek any employment. While agreeing with that the H.C.M. has directed that the R.L.A. should see thepapers and draft the necessary reply.

A There is no substance in any of the contentions raised by Shri Deshpande and a dra ft reply is appended herewith.

RTK. 19-7

R.L.A draft is strightly amended.

P.M.Lad
20-7

U.R. to P.W.D. No. 10397 dated 22-7-50.

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Office of the R.L.A.

Cost of constructing drawn outside the Selapur Co.'s area.

THe view taken by Secretary, Public Works Department is correct. Clause 13 of the ~~xf~~ agreement which extends to drainage works in the irrigation area of the Company has no application to the present case. The cost of constructing a ~~drix~~ drainage for the out fall will have to be borne by Government.

P. M. Lad
12/8
Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 11545 , dated the 14th August 1950.

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Office of the R.L.A.

Whoever may be the authority in the Thared State to hear appeals against ~~in~~ the orders of the customs officer levying the customs duty and penalty, it is clear that after the merger o f that State with the Bombay State, the revenue authorities have nothing to do with the collection of the customs duty, which is a central subject. Consequently the appeals may be returned for presentation to the proper authorities.

P.M.Lad
20/7

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 10298 , dated the 21st July 1950.

S .C. 4 copies
11/6.

R.I.No. 12512 dt. 21.7.1950

Submitted

2. It appears that whenever there is any death at Lonavala or Khandala and the dead body is desired to be removed to Bombay for disposal, permission of the Distt. Magistrate, Poona is required to remove the body. It has been complained by certain inhabitants of Lonavala and Khandala ~~xxx~~ that this procedure involves delay as the D.M. is not readily available and to obviate such delay it is requested by them that some local officer or officer at Poona may be empowered in this behalf. In his report the D.M. Poona States:-

> "Permits for the transport of dead bodies from one place to another are granted by this office in the enclosed form on the conditions mentioned in the form. This procedure is based on a long standing practice and I have not been able to trace the law or Rules under which it is necessary. The practife may have arisen out of the necessity of satisfying the Police or other Govt. officers of the places on way and the place of destination that the transport is bona-fide and there is no foul play."

R.L.A. is requested to advise whether the procedure followed by D.M. Poona is supported by any law.

3. All the relevant laws were looked into. i.e. the Indian Penal Code, Police Act, 1961, and Bombay District Police Act, 1890. The practice followed by the D.M. Poona does not appear to be relatable to any existing law. A Distt. Magistrate has however under sect. 39 (g) of the Bom. Distt. Police Act, 1890 power to makerules and orders to prohibit, save under regulations, the exposure ar movement in any street of the corpses of dead persona. This power is limited to "movement in any street" and also subject to such orders as may have been made by a Municipal or other authority empowered in this behalf.

The requirement of a permit from the D.M. for the removal of a dead body from one place to another has no legal sanction, but it is based on practice for Public purposes.

KTK.
7/8

R.L.E.

P.M.Lad
7/8

U.R. to H.D. No. 11224 , dated the 8-8-50.

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Office of the R.L.A.

The view taken by the Secretary , Labour and Housing Department is correct.

Under condition 1 the Society has agreed to pay to Government a deposit in advance equal to the estimated cost of acquisition of the land asked for by the Society, as may be fixed by the Collector, including 15% to be paid to the owners for compulsory acquisition. IUnder condition 2 the Society has agreed to pay the full ultimate purchase price after deducting the advance paid by it and in the event of its failing to pay the balance the deposit paid by it shall be forfeited to Government. Reading these provisions together it will be apparent that the amount to be deposited by the Society is in respect of the purchase price of the land and not in respect of any cost of the development of the land proposed to be acquired for it. Consequently, the failure of the four societies to pay the further instalment at the rate of Rs. 2/- per square yar d for the work of constructing roads in the Schemes would not be covered by condition 2 and the deposit already made by them would not be liable to be forfeited. The cost of development of the land is covered by condition 5, and the failure to pay the cost of development involves no forfeiture ofthe deposit made for the acquisition of the land. Government will have, therefore, to call upon these Sociaties to pay the balance of the acquisition price, and in the event of their failure it would be open to Governmentto forfeit the deposit under condition 2.

P.M.Lad
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Remembrancer of Legal Affairs.

U.R. to Labour & Housing Department, No. 12644 , dated 4th September 1950.

Office of the R.L.A.

Although I do not fully subscribe to all the views expressed by the High Court on this very vexed subject I feel that as an international part and a pre-eminent City of Business conditions in Bombay are not similar to those in Madras. The State of Bombay has already taken the step to transfer to the City Civil Court litigation of the pecuniary value of Rs. 25,000, and when that step is put beyond challenge, the first stage will have been achieved. The total abolition of the Original Side in Bombay and Calcutta is a bigger issue; and before the Government of India undertakes any legislation the States are no longer free to legislate on that topic- the question may be referred to a committee upon which due representation should be given to ~~xxfxxk~~ mofussil lawyers and members of the Appellate Side Bar, and also some distinguished Citizen

P.M.Lad
Remembrancer of Legal Affairs.

U.R. to H.D. No. 12951 dated the 11th September 1950.

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Office of the R.L.A.

Application of compulsary savings scheme to statutory corporations.

The servants of the statutory corporations are governed by the conditions of service prescribed by them. Consequently the scheme of compulsary savings cannot be applied by Govern-ment to the sergants of thestatutory corporations; but such corporations can be advised to adopt the scheme by the amending the rules if necessary.

P.M.Lad
29-7

Remembrancer of Legal Affairs.

U.R. to H.D. NO. 10805 , dated the 31st July 1950.

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11/6.

Office of the R.L.A.

The view taken by the Secretary, Labour and Housing Department is correct.

Condition 3 of the conditions subject to which Government agreed to acquire land for these Societies provides "We (Societies) agree to take over such area as may be assigned to the Societies even if it is less than the area applied for and shall not insist upon any particular area or its location". It is clear from this provision that the power to allot areas vaste entirely in Government. Under a condition 5 the Societies also agreed to pay the proportionate cost of development of land including construction of roads etc. By his letter dated the 30th May 1949, the Housing Commissioner, Bombay, informed the Societies of the block proposed to be allotted to each Society in the Scheme and required them to pay the road-development call of Rs. 2/- per square yard before the 15th July 1949 at the latest. Out of the 14 Societies 4 failed to respond to the call. These Societies were given another opportunity to pay that amount before the 1st August 1949 at the latest, with a ~~wa~~ warning that if the amount was not received by that date it would be assumed that they were not interested in taking the land in question. Reading these communications along with Conditions 3 and 5 it appears that the allotment of the areas to the Societies was made on the assumption that they would pay the road-development call of Rs. 2/- per square yard. Since these Societies failed to pay that call they would not be entitled to the allotted areas provided they fall within the lay-out proposed to be developed. Consequently, since these Societies failed to pay the call of Rs. 2/- per square yard, the allotment of plots originally proposed for these Societies may be cancelled and other plots reserved within the approved lay-out but in a different quarter other than the one proposed to be developed, may be assigned to them.

P.M.Lad
13-9

Remembrancer of Legal Affairs.

U.R. to Labour & Housing Deptt. No. 13067 dated the 13th Sept. 19

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